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Freedom of Conscience: Separating Church and State

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Freedom Of Conscience:
Separating Church And State

By Jethro K. Lieberman

ORIGINS OF RELIGIOUS LIBERTY

Religious oppression is older than the pyramids of Egypt and as current as the autocrats in Moscow, Peking, Teheran, Baghdad, and divers other capitals of the world today. One of the dominant themes of human history, religious intolerance unhappily continues, its ferocious thirst unslaked by centuries of killing, torture, and repression. You might suppose after all this time, after the Pharonic cruelties, the lion pits of Rome, the Crusades, the Inquisition, and the carnage of the twentieth century, that those who kill or mass in God's name might have become a trifle embarrassed, but that's not how they think.

You might especially suppose that those to whom it has been done would be sober enough not to do it unto others, but that's not how even most victims think — not our very own Puritans, for instance. Forced to support the Church of England, the Pilgrims fled, first to Holland and then to America. But travel did not make them more tolerant. They wished religious freedom for themselves, not for others.

Until 1692, the established church of Massachusetts was Congregational: residents of each town were assessed for the payment of a minister. After 1692, the law dropped the requirement that the church be Congregational, though it remained so in most towns until 1727 simply because a majority of taxpayers were Congregational. In 1727, the law was changed to permit Episcopalians to pay taxes to their church; they were no longer required to contribute to the Congregational church. In 1729, Quakers and Baptists were exempted from paying taxes for ministers' salaries, even of their own churches, although the law was not always fairly applied. For more than a century, until 1833, Massachusetts had two established churches.

Other colonies had officially established churches. New York, Connecticut, and New Hampshire had multiple establishments. In New York, towns that were religiously heterogeneous taxed each congregation to build and support its own churches. In five southern states — Georgia, Maryland, North Carolina, South Carolina, and Virginia — the Episcopal church (the transplanted Church of England) was the sole established state church. Every person was bound to go to that church on Sundays and to pay taxes to maintain: the church, regardless of belief. Only Delaware, New Jersey, Pennsylvania, and Rhode Island were free of officially established churches.

Laws establishing churches, it should be understood, were not intended simply to raise revenue. They were, at least initially, punitive regulations designed to force conduct conforming to the majority's religious tenets. A 1614 Virginia law mandated whipping for those who refused to be tested by a minister for "examination in the faith." The third time a parishioner broke the Sabbath, he or she could be executed. The death penalty was also available for speaking "impiously of the Trinity or one of the Divine Persons, or against the known articles of Christian faith."

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During the next century, the medieval belief that people must avow publicly, by word and conduct, their adherence to a particular creed gradually waned. By the time of the Revolution, some states stood firmly against church establishment, although the practice was not wholly abolished. The constitutions of New Jersey and Pennsylvania were explicit that no person could be obligated to pay for any church building or minister’s salary. The North Carolina constitution of 1776 and New York’s constitution of 1777 eliminated establishment outright.

Other states ceased their preference for one particular religion. In its 1780 Constitution, Massachusetts empowered the legislature to make public worship compulsory and to collect taxes to support ministers, but the money was to go to those of the taxpayers’ own denomination, if a minister of that persuasion preached in their town or nearby. The legislature was barred from subordinating “any one sect or denomination to the other.” Connecticut, Georgia, Maryland, New Hampshire, and South Carolina followed this pattern to varying degrees (in 1778, South Carolina proclaimed the “Christian Protestant religion” to be the state religion, a provision that was dropped in 1790 when religion was disestablished).

But it was Virginia’s abolition of the established Church of England in 1785 that was to have the most pregnant consequences for American constitutionalism. The fight was led by Jefferson, whose Statute of Religious Liberty, drafted in 1777, was adopted eight years later, and by Madison, whose “Memorial and Remonstrance Against Religious Assessments” had "staggering" political effect in electing a disestablishmentarian legislature that enacted Jefferson’s bill. Jefferson regarded the statute and Declaration of Independence as the two most important products of his ever fertile mind.

Jefferson always held religion to be a private matter. Granting that the government could prohibit injurious acts, he declared: “But it does me no injury for my neighbor to say that there are twenty gods, or no god. It neither picks my pocket nor breaks my leg.” Although by 1776, Virginia had considerably moderated its laws against dissenters, it remained a jailable offense to deny the trinity or the divinity of the Bible. Jefferson wished to free the human mind from every shackles, to sweep away the intellectual baggage of previous centuries that imprisoned free inquiry and the expression of opinion.

The Virginia Statute of Religious Freedom provided that:

no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall he be enforced, restrained, molested, or burdened in his body or goods, or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

This provision applied to all; not merely dissenters from the established but also non-Christians and even atheists were guaranteed absolute freedom of conscience. Madison saw the statute as forever extinguishing “the ambitions hope of making laws for the human mind.” So strong were the sentiments of Jefferson and Madison that both, as president, would later refuse even to proclaim national holidays of thanksgiving because they believed that doing so unconstitutionally entangled state and church.

The framers, in Article VI, had laid down the principle that no religious test could ever be required as a qualification for federal public office. Taking up the broader cause in the First Congress, Madison penned the language of an amendment denying Congress power to legislate in religious matters. The constitutional phrases themselves were gradually extended during the course of debate, to ensure that Congress have no power to legislate in religious matters, rather than, as certain Senate versions implied, a power to aid religion generally as long it did not prefer one religion over another. The House version was ratified in the First Amendment: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

THE “WALL OF SEPARATION”

In 1802, President Jefferson wrote the Danbury (Connecticut) Baptist Association that the First Amendment built “a wall of separation between church and state.” His famous statement remains the central metaphor for interpreting the freedom of religious clauses. But like all metaphor, it suggests more questions than it answers.

The Founding Fathers meant to sever religion and
government, the better that the people could achieve their secular purposes through the state and their religious purposes through independent churches. (The founders, of course, meant to deny all power over religion to Congress; today, by virtue of the Fourteenth Amendment, that power is denied the states as well.)

The First Amendment seeks to ensure these possibilities by simultaneously barring "an establishment of religion" and prohibiting state interference with the "exercise" of religion. These clauses can work in tandem: imposing a tax on the citizenry to build and maintain a particular church both establishes that church and interferes with dissenters' freedom to worship as they will. But frequently there is tension between the establishment and free exercise clauses. For example, a provision in the Tennessee constitution prohibited priests "of any denomination" from sitting in the state legislature — a position Jefferson advocated. Yet by seeking to prevent any entanglement between state and church, Tennessee imposed a severe burden on a person's profession of religious belief. In 1978, the Supreme Court unanimously voided the ban. Likewise, to prevent entanglement, a city might argue that it could not provide police or fire protection to churches within its boundaries, but a rigid policy would discriminate against churches and interfere with the right of their congregants to exercise their religion.

Beyond the potential conflict between the clauses lies the question of degree: How much state action toward religion constitutes an establishment or an infringement? In other words, how high (or straight) can the wall be — or must it be?

ESTABLISHMENTS OF RELIGION: THE MODERN VIEW

In 1947, a case involving public funds for bus transportation to and from all elementary schools, both public and parochial, Justice Black wrote:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelieve in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institution, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and State."

A powerful religious current in recent years has led some to suppose that Black was wrong in declaring that the First Amendment bars government from aiding religion (in the particular case, public funding for parochial school buses was upheld). According to proponents of this view, the First Amendment was intended only to prevent the
state from preferring one religion over another, not to stop the state from aiding religion in general. As William F. Buckley has put it, the First Amendment "was not designed to secularize American life, [but was intended] merely to guard against an institutionalized preeminence of a single religion over others on a national scale."

Buckley is twice wrong. This narrow interpretation of the establishment clause is not plausible. Nor does the broader interpretation of the First Amendment thereby "secularize American life."

Establishment did not mean to the framers an official status for a single, particular church: it meant an official position for any churches that citizens could be compelled to support through taxes and attendance. In barring an establishment, the framers intended not merely to prevent a particular church from receiving state endorsement over others but also to prevent any endorsement at all. Recall that those who opposed a bill of rights did so not because they wished their rights to be taken away but because they held that Congress had been given no power to do so. This was particularly true about power to enact legislation concerning religion. A bill of rights was therefore unnecessary; worse, some feared, it might even be dangerous because it would imply that whatever was not explicitly forbidden might somehow be implied as a power of the federal government (hence the Ninth Amendment). The modern suggestions that Congress may aid religion show that those dangers were rightly apprehended.

The impotence of Congress to foster religion does not, however, "secularize American life." To the contrary, the First Amendment leaves Americans free, on their own, to live as religious a life as they desire, short only of government involvement. Because the government may not prevent Buckley's neighbor from profaning the Lord does not mean that Buckley must go about blaspheming. Because the government may not force me to attend church does not mean that you cannot go as often as you like. Because the government may not lead my children in prayer in public school does not mean that my children may not pray there on their own.

To determine the constitutionality of legislation or other government action that affects religion, the Supreme Court has followed a porous, three-pronged test: "a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive government entanglement with religion." If a state practice fails any part of this test, it is unconstitutional.

The test is easy to state, but here especially, as Justice Holmes taught, "general propositions do not decide concrete cases. The decision will depend on a judgment or intuition more subtle than any articulate major premise." What follows is a summary of the intuition that has guided the Court during the past four decades, the period of active religion jurisprudence.

Financial Support for Religious Activities

A string of federal and state enactments have tested the limits of government financial aid to religious institutions, in particular to sectarian schools. The three-pronged test, largely developed through these cases, has proven notoriously difficult to apply, and through the 1970s and 1980s, shifting majorities of justices have led to results that have seemed contradictory, if not paradoxical. As Leonard F. Manning has summed them up:

Lawyer and layman alike must have been wondrously perplexed when the Court told us that the state would be compelled to police the teaching of the partially subsidized secular instructor in the church-affiliated elementary and secondary schools, although surveillance is not mandated to guard against indoctrination in the wholly funded public school; that the state may lend text books to parochial school students but that it may not lend those same students, or their parents, movie projectors, tape records, record players, maps and globes, science kits or weather forecasting charts; that a state may exempt church property from taxation but that it may not provide state income tax credits or income tax deductions for parents who pay tuition to church-related elementary and secondary schools; that the state may provide free bus transportation, to and from school, for children attending parochial schools but it may not provide the same transportation for the same students for trips to governmental, industrial, cultural and scientific centers designed to enrich their secular studies; that the state may provide direct,
noncategorical funding of church-related colleges, but may not provide indirect, and restricted financial assistance for church-affiliated secondary schools; that the state may not provide for children with special needs, remedial and accelerated instruction, guidance counseling and testing, speech and hearing services, on nonpublic school premises, but that it may provide speech and hearing diagnostic services in the nonpublic school; and that the state may provide — in public schools, public centers or mobile units — therapeutic services for deaf, blind, emotionally disturbed, crippled and physically handicapped nonpublic school children but that it may not provide the same services for the same children on the nonpublic school premises.

Contrary though the results may seem, they are perhaps best explained as the Court's groping attempt to construct a zigzagging wall of separation to accommodate some secular interests that somehow "feel" as though they would neither advance nor hinder anyone's religious practice. To use another set of examples, the Court has rejected a "released-time" program in which public schools ended an hour early one day a week to permit students to attend voluntary religious instruction in the schoolrooms, whereas it has permitted a similar program in which students who volunteered could leave the school grounds to go to religious centers for religious instruction. In the latter case, the students were pursuing their religion elsewhere; in the former, the school was inextricably entangled in the religious activity. The distinction suggests the subtle feel by which the Court has been constructing the wall.

Government spends money on religious activities in ways other than schools. For example, it pays for chaplains in the armed forces and prisons. Though given the opportunity, the Court has never disapproved these activities because although the expenditures obviously tend toward a religious establishment, the failure to do so would amount to government interference with soldiers' and inmates' free exercise of religion. In a context between the two religion clauses, the free exercise clause will usually be paramount.

School Prayers

In cases that have inflamed more than archfundamentalists, the Court has struck down prayer and Bible reading in public schools. The first prayer case, in 1962, involved a "nondenominational" prayer written by the New York Board of Regents. Said Justice Black: "It is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by the government." In 1963, the Court rejected a Pennsylvania law that required teachers to read aloud passages from the Bible and students to recite in unison the Lord's Prayer. Despite the outcry, the practice surely flunked all three prongs of the establishment test: There was no secular legislative purpose, the primary effect of the reading was to advance religion, and public readings fostered excessive government entanglement in religious activity. That the practice of government-sponsored prayer is an impermissible establishment seems especially clear in view of prayer advocates' failure to be satisfied by the obvious alternative. Nothing that the Court has ever said prohibits individual schoolchildren on their own to pray in the schoolyard before classes, in the opening minutes while the teacher is calling the class to order, or at any quiet moment during the day. The only purpose in school prayer is to place the government's imprimatur on the practice, and that is precisely what the establishment clause forbids.

To be sure, children who do not wish to participate in the prayer or Bible reading could sit silently or be excused. Erwin S. Griswold, then dean of Harvard Law School, argued that the state does not do ill in thus setting these children apart:

Is it not desirable, and educational, for [the child of a nonconforming or minority group] to learn and observe this [difference in beliefs], in the atmosphere of the school — not so much as he is different as that other children are different from him? And is it not desirable that, at the same time, he experiences and learns the fact that his difference is tolerated and accepted? No compulsion is put upon him. He need not participate. But he, too, has the opportunity to be tolerant. He allows the majority of the group to follow their own tradition, perhaps coming to understand and respect what they feel is significant to them.

This is an odd way to put the matter: Ought we not prefer that the majority learn to tolerate the practices of the minority? Minorities have many (and a lifetime's) ways to learn what sets them
Bans on Secular Doctrines: “Monkey Laws”

Evolutionists have been fighting fundamentalists (who today call themselves “creationists”) ever since Darwin. Gaining national notoriety in the Scopes trial in 1925 in Tennessee, the issue is whether a state may bar teachers from talking about the theory that Homo sapiens has evolved from lower animal orders. In 1984, a case testing an Arkansas “monkey law” reached the Supreme Court, which unanimously struck it down on the finding that the state had selected “from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine.”

Government-Sponsored Religious Symbols: The “Creche” Case

It ought to follow that when the government affirmatively sponsors religious symbols, it is similarly violating the establishment clause. But symbols have proved more resilient, perhaps because they have become so cheapened that we scarcely notice them. Our currency recites that “In God We Trust” (as do any number of public buildings). Is that motto an establishment of religion? The issue has never been tested.

But in 1984, the Supreme Court narrowly approved the public funding in Pawtucket, Rhode Island, of a creche, a nativity scene displayed in a park in the heart of the downtown shopping center. The Court’s stated rationale was that Christmas is a national holiday and the creche fulfilled an essentially secular purpose; in any event, it was a “passive symbol” of a “celebration acknowledged in the Western World for 20 centuries.”

Concurring, Justice O’Connor sought to square the result with the three-pronged test. Even if the creche had a secular purpose, she noted, it would still fail the test if government intended nevertheless “to convey a message of endorsement or disapproval of religion.” The creche passed the test, she said, because Pawtucket had not intended to endorse Christianity: The creche had become one of the symbols of a “holiday [that] itself has very strong secular components and traditions.”

Dissenting, Justice Brennan condemned a “beguilingly simple, yet faulty syllogism”: that to recognize Christmas as a public holiday permits the conclusion that the creche is constitutionally permissible because the creche is “nothing more than a traditional element of Christmas celebrations.” Brennan would separate the secular from the sectarian elements and symbols of the holiday: Santa Claus is secular, Jesus is not.

Interpreting Religious Doctrine

The courts may construe symbols to determine secular meaning, but they may not sit to interpret religious doctrine to determine which faction in a fight over church property or church office is entitled to its use. A state court may not decide that a national religious organization has so departed from the ecclesiastical doctrines of the church that a local congregation is entitled to sever the parent body’s control over the local church property. Ecclesiastical questions are for church authorities, not civil courts. Nor may a court set aside a church’s defrocking of its bishop despite a claim that the church had violated its own rules: “A civil court must accept the ecclesiastical decisions of church tribunals as it finds them.” (These cases demonstrate that the First Amendment prohibits any branch of the government, not just legislatures, from actions that tend toward an establishment of religion.)

FREE EXERCISE OF RELIGION: THE MODERN VIEW

The government may undertake neither to establish nor to prohibit individuals from freely exercising their religions. But the free exercise clause has its own difficulties: May the religious eccentric justify any action by pointing to its religious significance? In a nation devoted to hucksterism, that seems a tall proposition. Here, as in the case of the free speech clause, the courts have tended to distinguish between belief and conduct, though the words again mask how difficult it is to distinguish at the margin.

Right to Proselytize

Communicants’ active proselytizing on behalf of their faith is largely protected against claims that in so doing they may offend others and thus disturb
the peace. In an early case, a Jehovah's Witness played a phonograph on a public street; the record attacked all organized religious systems as instruments of Satan, in particular the Roman Catholic church. His intention was to persuade passersby to contribute money "in the interest of what [he], however misguided others may think of him, conceived to be true religion." Passersby were in fact offended; the neighborhood in which he had set up his booth was 90 percent Catholic. He was convicted of violating both a breach-of-peace law and a licensing law requiring him to obtain the permission of the secretary of the public welfare council, who was empowered to determine whether solicitations were for religious or charitable causes. The Supreme Court reversed. A narrowly drawn statute that prohibited all noise from the public streets might have withstood challenge, but not a prosecution obviously aimed at clamping down on "obnoxious" religious discussion. The licensing scheme was struck down on the same grounds that the Court had voided similar ordinances involving nonreligious speech.

Enforced Speech Repugnant to One's Creed

The free exercise clause will not permit the state to dictate what a person must say or affirm. In the "flag salute cases," the Supreme Court in 1940 upheld a Minersville, Pennsylvania, public school rule requiring all students to salute the flag and recite the usual pledge of allegiance on pain of expulsion. The pledge offended the Jehovah's Witnesses' literal interpretation of the Bible. The Court's ruling upholding the flag salute ("the symbol of national unity") set in motion in many communities across the country a series of violent reactions to the Witnesses' very presence. (Pious and unyielding, considered beyond the pale of mere eccentricity by many mainstream Protestants, "a sect," in Zechariah Chafee's phrase, "distinguished by great religious zeal and astonishing powers of annoyance," Jehovah's Witnesses have figured in a substantial number of the significant free exercise cases, to the greater benefit of all religions in America.) Scores of school boards rushed to adopt flag salute rules, but as Judge J. Skelly Wright concluded, "the words of the Supreme Court, that the protection of freedom could best be left to the responsibility of local authorities, were perverted and used as an excuse for what was in effect religious persecution by the local school boards."

Three years later, the Supreme Court reversed itself in a case coming from West Virginia. In an often-quoted passage, Justice Jackson declared: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Well into the nineteenth century, many states required just that: Public officeholders were required to swear a belief in Christianity or even Protestantism. Though this restriction disappeared by 1877 (New Hampshire was the last holdout), a similar oath of belief in God remained in the constitutions of eight states. The Supreme Court finally struck these down in 1961, in a case in which Maryland refused to commission a notary public because he refused to declare that he believed in God. And in 1977, the Court voided a New Hampshire law that car owners display the state motto "Live Free or Die" on their license plates, again in a case brought by Jehovah's Witnesses.

Forced Choices

A Seventh-Day Adventist in South Carolina was discharged from her job because she refused to work on Saturday, her Sabbath. She applied for but was denied state unemployment compensation because she refused, "without good cause," to undertake suitable work offered her (namely, her job). Although the compensation law was "religion blind," it worked an obvious discrimination against the applicant, and in 1963 the Supreme Court struck down the state's work test. Her ineligibility stemmed entirely from her religion. The rule imposed on her "forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion to accept work, on the other. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."

This case suggests the possibility that the Court's earlier decisions in the Sunday Closing Law Cases might in time be reversed. In one of those cases, an Orthodox Jew had protested a law that compelled him to close his store on Sunday, even though his religion compelled him to close on Saturday, closings that together imperiled his economic survival. The Court upheld the Sunday ordinance.
Exemption from a Secular Duty:
Conscientious Objection

The tangled history of the conscientious objector provisions in the federal draft laws is beyond our scope. The Supreme Court has never ruled definitively that Congress must exempt from the military draft those who object to “war in any form” on religious grounds. But Congress has long provided such an exemption. An important subsidiary question, however, is what exactly constitutes a religion for purposes of the exemption. Until 1967, the federal law defined religion as a “belief in a relation to a Supreme Being involving duties superior to those arising from any human relation but [not including] essentially political, sociological, or philosophical views or a merely personal moral code.” In a 1965 case, the Court construed that provision to include a “sincere and meaningful” belief that “occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God,” and in 1970, the Court held that, as construed, the exemption applied to those whose sincere beliefs were based on a personal philosophical, moral, or ethical code. But the exemption does not apply to a “selective conscientious objector,” one who opposes only certain wars, even if that opposition is grounded in a clear theological belief.

Sincerity of Belief

Constitutional protection for the exercise of religion cannot be a shield for every mountebank who claims a religious justification for his actions. Suppose a huckster solicits funds, asserting that he is a divine messenger of God. In fact, he believes no such thing; he is interested only in how much he can rake in. In a mail fraud case on these facts, the Court permitted the jury to consider the sincerity of the defendants’ claim, but not the truth of it. If the jury concluded that the defendants honestly believed they were divine messengers, there could be no conviction: “If one could be sent to jail because a jury in a hostile environment found [religious] teaching false, little indeed would be left of religious freedom.”

This problem remains a live and vexing one, as recent news stories attest. If a state exempts a minister’s real estate from taxation, may others claim to be ministers of their own religion to obtain the exemption?

Unlawful Religious Conduct

Protected religious practice obviously must not be confined to belief or expression of belief. Labeling a practice “conduct” to avoid the free exercise clause would put much religious ritual at risk; drinking wine, eating wafers, affixing symbols to buildings. But it is not less true that religiously justified conduct has its limits: Ritual murder will not be condoned because someone somewhere has called it religious.

The classic instance of state power over conduct claimed to be integral to the religion is the now-lapsed Mormon belief that polygamy was a religious duty for men. The Supreme Court in 1878 sustained a conviction of a Mormon who had taken a second wife in the then territory of Utah in violation of a federal law. The Court reasoned that American society was founded on the monogamous family and that Congress would clearly prohibit polygamy in the territories to all who did not profess a religious belief in the necessity of it. Did the First Amendment shield those who did affirm it as a religious duty? No, said the Court, for Congress “was left free to reach actions which were in violation of social duties or subversive of good order.” It is doubtful that so broadly worded a justification would be entertained today, for religion often teaches a violation of some people’s social duties and others’ “good order.” (For example, suppose a religion taught the necessity of a man’s living with several women at once, in a state akin to marriage, if not in the marriage relationship. Could the state today ban the arrangement? Indeed, it might not be able to ban multiple living arrangements even without religious justification.)

Nevertheless, the belief-action distinction retains some validity. Thus the Court upheld a hospital’s decision to override a parent’s objection on religious grounds to a child’s being given a lifesaving blood transfusion.

On the other hand, the California Supreme Court reversed the conviction of members of the Native American church for using peyote in religious ceremonies. Though the state may deny its use to others, the court held that for the Navaho priest, peyote was central to the religious practice of a genuine and ancient church, the drug amounting in effect to a deity.
Also, in 1972, the Supreme Court held that Wisconsin could not enforce its compulsory public education laws against the Amish, whose religious convictions preclude them from sending their children to school beyond the eighth grade. Finding that the entire Amish way of life was "not merely a matter of personal preference but one of deep religious conviction, shared by an organized group, and intimately related to daily living," the Court held that enforcing the state's education law "would gravely endanger if not destroy the free exercise" of the Amish religious beliefs.

To preserve a way of life against the admittedly secular purposes of the state suggests how high a deference the Court can pay to the free exercise clause. But that deference poses a difficulty in turn, for the free exercise of religion must be that of individuals, not a way of life. The Court expressly noted that nothing in the record suggested that the children wished to attend school despite their parents' desires. But suppose they did? Not even parents may maintain an indefinite power to shape the beliefs of their children. In the end, the liberty that the First Amendment protects is that of the individual — even if the child (at least above a certain age) deserts the faith of her fathers and joins the rankest of cults. Or at least so it must be if we are to remain true to the spirit of religious freedom in America.

U.S. Constitution Bicentennial Notes

November 2
1787: Philadelphia Independent Gazetteer printed a pro-Federalist Essay.
November 3
1787: William Findley published anti-Federalist tract.
November 4
1787: Pelatiah Webster, Philadelphia merchant, published pro-Federalist tract.
November 5
1787: Connecticut Courant published pro-Federalist letter from "A Landholder."
November 6
1787: Pennsylvania elected delegates to state ratifying convention.
November 7
1787: Nicholas Gilman said that without sound government we would be contemptible even to savages.
November 8
1787: George Washington expressed concerns about his tenants' rent payments to Batten Hall.
VACANCY ANNOUNCEMENT

U. S. District Court
Northern District of Oklahoma

TITLE: Legal Assistant (Law Clerk)

LOCATION: Honorable John Leo Wagner, U. S. Magistrate U. S. District Court, Northern District of Oklahoma
Room 4-528 U. S. Courthouse
Tulsa, Oklahoma 74103
918-581-7976

AVAILABLE: January 11, 1988

RESUMES DUE: November 16, 1987; one week prior to scheduled interview.

INTERVIEWS CONDUCTED: After November 23, 1987

SALARY: Pursuant to Statute; Salary Range: $22,458 to $27,172 (JSP-9 to JSP-11, as the Magistrate recommends)

BASIC REQUIREMENTS:
Experience: One year's experience in the practice of law, in legal research, legal administration, or equivalent experience received after graduation from law school. Major or substantial legal activities while in military service may be credited on a month-for-month basis, whether before or after graduation, but not to exceed one year if before graduation.

Substitution: A law graduate, either admitted to the bar or awaiting examination, is eligible as Associate Law Clerk, JSP-10 or JSP-11, provided he/she has: (1) graduated within the upper 10% of his/her class from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools; or (2) had experience on the editorial board of law review of such a school and graduated within the upper 15% of the class; or (3) graduated from a law school on the approved list of the American Bar Association or that of the Association of American Law Schools with an LLM degree; or, (4) demonstrated proficiency in legal studies which in the opinion of the appointing magistrate is the equivalent to (1), (2), or (3) above. Qualified law students expected to graduate not later than December, 1987 will be considered.

The U. S. District Court is an Equal Employment Opportunity Employer. Vacancies are filled in accordance with the nondiscrimination policies of the U. S. Government. No funds are available for transportation necessary for interviews.